

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

Appeal of Christopher Hunt

Docket #2019-T-007

Department of Administrative Services

October 30, 2019

The New Hampshire Personnel Appeals Board met in public session on Wednesday, July 10, 2019, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Christopher Hunt, the Appellant. The following commissioners heard the above matter: Vice Chair Norman Patenaude, Esq., Commissioner David Goldstein, and Commissioner Marilee Nihan. Mr. Hunt, who was represented at the hearing by Attorney Thomas Colantuono, appealed his termination as a Carpenter II. Attorney Erik Bal appeared on behalf of the Department of Administrative Services.

The record of the hearing in this matter consists of pleadings filed by the parties prior to the date of the hearing, notices and orders issued by the Board, the audio recording of the hearing on the merits of the appeal, and documents admitted into evidence.

THE FOLLOWING PERSONS GAVE SWORN TESTIMONY:

Christine Marie, Human Resources Administrator, Department of Administrative Services
Ronald White, Director of Property Management, Department of Administrative Services
William Charron, Carpenter II, Department of Administrative Services
Christopher Hunt, Appellant

ISSUES OF LAW:

Per 1002.02

BACKGROUND:

The Department of Administrative Services hired the Appellant as a Carpenter II in June 2018. Approximately six months after his hire, the Appellant was injured at a second job he had at the United Parcel Service (hereinafter UPS). Due to the extent of his injury, the Appellant underwent surgery and was out of work for an extended period of time, beginning December 3, 2018.

Due to the Appellant only being employed with the State for approximately six months, he did not have sufficient leave time accrued to cover his absence. Consequently, his leave time was soon depleted. The Appellant continued to be out of work without leave time and he was not approved for unpaid leave status. The Appellant did not provide any indication of when he would be ready to return to work. The State had a business need to fill the position. As a result, the Appellant's employment was terminated on February 19, 2019.

After carefully considering the parties' testimony, evidence and arguments, the Board made the following findings of fact and rulings of law:

FINDINGS OF FACT:

1. The Department of Administrative Services hired the Appellant as a Carpenter II on June 8, 2018. (State's Exhibit #6 and Testimony of Ms. Marie)
2. On November 28, 2018, the Human Resources Administrator, Christine Marie, sent the Appellant an e-mail regarding the Appellant's inquiry about leave time as he required surgery due to an injury he sustained at a second job at UPS. Ms. Marie informed the Appellant that because he had been employed by the State for less than one year, he did not qualify for leave under the Family Medical Leave Act (hereinafter FMLA). However, Ms. Marie did inform the Appellant that his supervisor could approve leave time that he had

already accrued, such as annual and sick leave. The Appellant was not approved to be out on leave without pay. (State's Exhibit #4, State's Exhibit #6 and Testimony of Ms. Marie)

3. In the same e-mail referenced in paragraph 2 above, Ms. Marie notified the Appellant that he would need to furnish a completed "Fitness for Duty" form from his treating physician notifying her that he was fit to return to work. (State's Exhibit #4)
4. The Appellant occupied one of two Carpenter II positions. The State could not hire another Carpenter II as only two positions had been approved and the budget did not allow another to be hired. (Testimony of Ms. Marie)
5. The Appellant left work early on December 3, 2018, to prepare for his surgery on December 20, 2018. Even though the Appellant did not qualify for FMLA job protection, Ms. Marie waited twelve weeks before considering termination. (Testimony from Ms. Marie)
6. Due to the Appellant being out of work for so long, a backlog of work orders was created and was the responsibility of just one carpenter. Oftentimes, a job required two carpenters. During the time the Appellant was out of work, a backlog of approximately forty orders formed, which put a lot of stress on the one carpenter. (Testimony of Ronald White)
7. The Appellant sent an e-mail to Ms. Marie on January 1, 2019 informing her that he was typing with one finger and that he had been restricted from driving for five months. The Appellant had exhausted his leave. At this point, the Appellant entered into an "unpaid leave status." An unpaid leave of absence had not been approved and, therefore, the Appellant had been absent without authorized leave since January 18, 2019. The Appellant did not provide any information to Ms. Marie about a possible return to work date. This was the last communication Ms. Marie had with the Appellant prior to completing the Intent to Dismiss letter. (Testimony of Ms. Marie)
8. Ms. Marie sent the Appellant an Intent to Dismiss letter on February 19, 2019, and requested that the Appellant contact her within two days to schedule a meeting to discuss the possibility of dismissal. This meeting took place, in accordance with the Administrative Rules, on

March 12, 2019. On March 14, 2019, the Appellant was sent his dismissal letter. (State's Exhibit #6 and Testimony of Ms. Marie)

9. The Appellant was cleared to return to work on July 17, 2019. (Testimony of Appellant)

RULINGS OF LAW:

- A. Per 1002.02 (a) At any time during the initial probationary period an appointing authority may dismiss an employee without prior warning if that employee fails to meet the work standard or engages in any conduct for which discipline is authorized pursuant to this part. Provided the dismissal is not: (1) arbitrary, (2) illegal, (3) capricious, (4) made in bad faith.
- B. According to Per-A 207.12 (a) of the Board's rules, "In probationary termination appeals, the board shall determine if the appellant proves by a preponderance of the evidence that the termination was arbitrary, illegal, capricious, or made in bad faith. Allegations that the Appellant does not know the reason(s) for the dismissal, or evidence that the appointing authority took no formal disciplinary action to correct the employee's unsatisfactory performance or failure to meet the work standard prior to dismissing the employee, shall not be deemed sufficient to warrant the appellant's reinstatement."

DISCUSSION and ORDER:

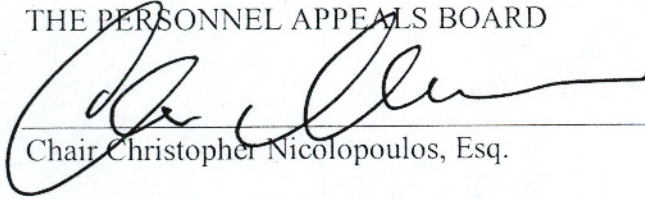
The Department of Administrative Services hired the Appellant as a Carpenter II on June 8, 2018. Approximately six months after he began his employment with the State, he was injured at a second job. He left on December 3, 2018 to prepare for surgery related to his injury he sustained while working for UPS. At this time, however, the Appellant had been employed for less than one year and, consequently, did not qualify for job protection under FMLA. The Appellant was instructed to utilize sick and annual leave. Since the Appellant had not been employed long, his sick and annual leave was quickly depleted. Even though the Appellant did not qualify for FMLA protection, the State did not consider moving forward with dismissal until after twelve weeks.

The Appellant was one of only two Carpenter II positions. The State could not hire another carpenter or even a temporary fill-in until the Appellant was ready to come back to work, due to the budget and State protocols. Having only one Carpenter II on staff created a backlog and some jobs required two carpenters. The Appellant's absence created a hardship for the State.

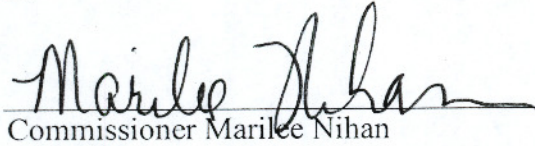
The Appellant notified the State on January 1, 2019, that he had been restricted from driving for five months. In addition, the Appellant could not tell the State when he would be able to return to work. The Board heard testimony that the Appellant was a fine carpenter and a good employee, however, his absence caused a hardship on the State as the remaining carpenter now had to try and complete jobs by himself. In order for the Appellant to prevail, he needed to prove that his dismissal was arbitrary, illegal, capricious or made in bad faith. The Appellant failed to meet this burden as the Board believes the State dismissed the Appellant because of a hardship and due to a business necessity.

Having carefully considered the evidence and arguments presented, the Board unanimously voted to DENY the appeal and uphold the dismissal of the Appellant.

THE PERSONNEL APPEALS BOARD



Chair Christopher Nicolopoulos, Esq.



Commissioner Marilee Nihan

cc: Lorrie Rudis, Director of Personnel, 28 School Street, Concord, NH 03301
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